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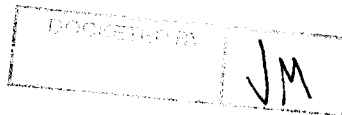
Arizona Corporation Commission

DOCKETED

BEFORE THE ARIZONA CORPORATION COMMISSION P 2: 37

NOV 16 2000

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER



AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF NOTICE OF) DOCKET NO. RE-00000C-00-0377
PROPOSED RULEMAKING FOR THE)
ENVIRONMENTAL PORTFOLIO)
STANDARD.)

**SUPPLEMENTAL COMMENTS OF THE ARIZONA CLEAN ENERGY
INDUSTRIES ALLIANCE AND YORK RESEARCH, INC.**

The Arizona Clean Energy Industries Alliance and York Research, Inc. ("Solar and Renewable Energy Industries") make the following supplemental comments based on the new discussion at the November 9, 2000 public comment hearing. The public comment hearing was held to take comments from the Utilities Division Staff ("Staff") and Interested Parties regarding the Commission's proposed Renewable Portfolio Standard ("EPS") Rule R14-2-1618.

At the public comment hearing, the parties discussed, among other things, Judge Campbell's anticipated Final Judgment in Superior Court Case No. CV 97-03748 (Consolidated) affecting electric competition and possibly affecting the Environmental Portfolio Standard. Based on this discussion, the Administrative Law Judge asked whether the proposed EPS Rule R14-2-1618 needs to be forwarded to the State Attorney General's Office for certification. The Solar and Renewable Energy Industries want to clarify the record in response to this question. First, we believe that the EPS surcharge is directly related to the

1 Commission's power to determine rates and charges that utilities charge under the Arizona
2 Constitution and case law. Second, we believe that the EPS surcharge is intended to be
3 interim for a **new** service, i.e., "environmentally friendly" power service, until the
4 Commission has the opportunity to review these changes in light of the actual costs of the
5 EPS in a rate case or other applicable proceeding. Finally, we believe that the Commission's
6 power, to determine rates and charges for public service corporations, is exclusive and cannot
7 be interfered with by the State Attorney General's Office. Support for these positions is
8 provided below.

9
10 The Arizona Constitution grants the Commission the power to impose rates and
11 charges on public service corporations. Specifically, Article 15, § 3 of the Arizona
12 Constitution provides:

13
14 The Corporation Commission shall have full power to, and
15 shall, prescribe ... just and reasonable rates and charges to be
16 made and collected by public service corporations within the
state for service rendered therein...

17 Additionally, A.R.S. § 40-202(A) provides:

18 The commission may supervise and regulate every public
19 service corporation in the state and do all things, whether
20 specifically designated in this title or in addition thereto,
necessary and convenient in the exercise of such power and
jurisdiction.

21 Under the Arizona Constitution and State statute, therefore, the Commission has authority to
22 establish rates and charges that public service corporations charge such as the EPS surcharge
23 under the proposed EPS Rule R14-2-1618.

24
25 It is well established under Arizona law that the Commission has the authority to
26 determine "interim" rates and charges pending the establishment of a permanent rate at a

1 future rate review proceeding. See Scates v. Arizona Corporation Commission, 118 Ariz.
2 531, 578 P.2d 612 (App.1978); Pueblo Del Sol Water v. Arizona Corporation Commission,
3 160 Ariz.App. 285, 772 P.2d 1138 (1989). Accordingly, the Commission can impose the EPS
4 surcharge, as an interim rate, pending the establishment of a permanent rate at future rate-
5 review proceedings.
6

7 Lastly, Arizona law says that the Commission's power to determine rates and charges
8 of public service corporations is exclusive and cannot be interfered with by the executive
9 branch of the state government, including the State Attorney General's Office. Ethington v.
10 Wright, 66 Ariz. 382, 189 P.2d 209 (1948); Morris v. Arizona Corporation Commission, 24
11 Ariz.App. 454, 539 P.2d 928 (1975); Pueblo Del Sol Water v. Arizona Corporation
12 Commission, 160 Ariz.App. 285, 772 P.2d 1138 (1989). The proposed EPS Rule R14-2-1618
13 is clearly rate related. The State Attorney General's Office, therefore, has no power to
14 interfere with this rulemaking. Furthermore, the Commission is under no obligation to
15 forward the EPS Rule R14-2-1618 to the Attorney General's Office for certification.
16

17 On a final point, the Solar and Renewable Energy Industries reiterate our previous
18 comment that the Commission should promulgate the EPS Rule, not under Article 16 dealing
19 with Retail Electric Competition, but instead under an entirely new Article. This makes sense
20 for two reasons. First, the EPS Rule and the Retail Electric Competition Rules have little to
21 do with each other, and either can exist in the absence of the other. Second, since April of
22 1999, the entire Environmental Portfolio Standard evidentiary proceeding and rulemaking
23 have been separated from the Retail Electric Competition Rules anyway. Accordingly, the
24 Solar and Renewable Energy Industries recommend that the Commission promulgate the EPS
25
26

1 Rule under a new Article. Furthermore, we recommend that the Commission adopt Staff's
2 suggestion that the new Article also include the Commission's proposed Distributed
3 Generation and Interconnection Rules once they are promulgated.
4

5 DATED this 16th day of November, 2000.

6 MARTINEZ & CURTIS, P.C.

7 By 

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11 Attorneys for the Arizona Clean
12 Energy Industries Alliance and
13 York Research, Inc.

14 **An original and ten copies**
15 **of the foregoing, filed this**
16 **16th day of November, 2000**
17 **with:**

18 Docket Control
19 Arizona Corporation Commission
20 1200 West Washington
21 Phoenix, Arizona 85007

22 **A copy of the foregoing**
23 **mailed or hand-delivered**
24 **this 16th day of November,**
25 **2000 to:**

26 Mailing list for Docket No. RE-00000C-00-0377

1713/documents/supplemental comments.111400